

*Docket: 440844*

**REMARKS:**

**I. In the Claims**

Claims 1-25 are pending in the current application. Claims 1-14 stand rejected; claims 1,2, and 6 have been amended; and claims 15-25 are newly added. Claims 1, 8, 16, and 22 are independent.

**35 U.S.C. § 102(b) Rejections**

Claims 1, 5, 7, 8, 12, and 14 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Brown (U.S. 5,899,211).

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

**Claim 1**

Claim 1 has been amended to clarify that the loop is formed only in the middle of the member (i.e., not at the first or second end of the member). This is a feature not found in Brown ('211), either expressly or inherently, and as such, the anticipation rejection under Brown ('211) cannot be maintained under *Verdegaal*. As such, withdrawal of the current anticipation rejection of claim 1 is respectfully requested, as well as withdrawal of the current anticipation rejection of claims 5 and 7 that depend therefrom.

Claim 1 has been further amended to require the at least one support member to be spirally wrapped around the member. A similar limitation appears in claim 8 ("wherein said strand retention member is spirally wrapped around at least one of...") but has not been acknowledged by the examiner, and benefits of this spiral wrapping are discussed at paragraphs 14 and 15 of the specification as filed, among other places. The applicant respectfully submits that this is a non-obvious improvement over the prior art and that claim 1 is in condition for allowance, along with claims 2-7 and 15 that depend therefrom. Allowance of claims 1-7 and 15 is respectfully requested.

*Docket: 440844*

Claim 8

Claim 8 is not anticipated by Brown ('211) because every element of claim 8 is not found, either expressly or inherently described, in Brown ('211). More particularly, Brown ('211) does not have a strand retention member "spirally wrapped around at least one of a first end of said elongated member, a middle of said elongated member, and a second end of said elongated member". As noted above in reference to the amended claim 1, this is a feature that has not been previously addressed by the examiner but that provides substantial benefits over the prior art. The applicant respectfully submits that claim 8 sets forth a non-obvious improvement over the prior art, that the current 35 U.S.C. § 102(b) rejection of claim 8 does not comply with the requirements of *Verdegaal*, and that claim 8 is in condition for allowance, along with claims 9-14 that depend therefrom. Allowance of claims 8-14 is respectfully requested.

In accordance with MPEP § 706.07(a), any subsequent rejection of claim 8 on a new ground of rejection (i.e., a ground of rejection not previously used to reject claim 8) should be in the form of a **non-final** Office Action unless necessitated by the information submitted in the IDS filed concurrently herewith. This is because claim 8 has not been amended herein, and therefore a new ground of rejection would not be necessitated by applicant's amendment of claim 8.

**35 U.S.C. § 103(a) Rejections**

Claims 2 and 9 stand rejected under 35 U.S.C. § 103(a) as being obvious over Brown ('211) in view of Silva (U.S. Pat. Pub. No. 2004/0103909). Claims 3, 4, 10, and 11 stand rejected under 35 U.S.C. § 103(a) as being obvious over Brown ('211) in view of Abasta-Douglas (U.S. 6,182,672). Claims 6 and 13 stand rejected under 35 U.S.C. § 103(a) as being obvious over Brown ('211) view of Ross-Kuehn (U.S. 6,830,054).

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed

*Docket: 440844*

invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Inter. 1985). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

#### Claim 2

Claim 2 has been amended to improve the form of the claim and to simplify the limitations appearing therein; the "support member" limitation has been removed.

The arguments set forth above relating to "spirally" in claim 1 are incorporated herein by reference, and the applicant submits that these arguments place claim 2 in condition for allowance.

Further, claim 2 requires a hair anchor to be attached to the first end of the member, the middle of the member, or the second end of the member. The member must form a loop only in its middle section (i.e., not at the first or second end) according to claim 2. Silva ('909) does not set forth such a member, as the member of Silva ('909) is simply a circular ring; it does not form a loop only in a middle section. Because Silva ('909) does not disclose a member having such a first end, second end, and loop-defining middle, it cannot teach attaching a hair anchor to a member that has a first end, second end, and loop-defining middle. The applicant respectfully submits that the examiner has not met the third requirement of *Vaeck*, and the applicant respectfully requests allowance of claim 2.

*Docket: 440844*

Claim 9

The arguments set forth above relating to "spirally" in claim 8 are incorporated herein by reference, and the applicant submits that these arguments place claim 9 in condition for allowance.

Further, claim 9 requires a hair anchor to be attached to the strand retention member, the first end of the elongated member, the middle of the elongated member, or the second end of the elongated member. The elongated member must form a loop and be elongated according to claim 9. Silva ('909) does not set forth such a member, as the member of Silva ('909) is simply a circular ring; it is in no way "elongated". Because Silva ('909) does not disclose an elongated member having such a first end, second end, and middle, it cannot teach attaching a hair anchor to an elongated member that has a first end, second end, and middle. The applicant respectfully submits that the examiner has not met the third requirement of *Vaech*, and the applicant respectfully requests allowance of claim 9.

In accordance with MPEP § 706.07(a), any subsequent rejection of claim 9 on a new ground of rejection (i.e., a ground of rejection not previously used to reject claim 9) should be in the form of a **non-final** Office Action unless necessitated by the information submitted in the IDS filed concurrently herewith. This is because claim 9 has not been amended herein, and therefore a new ground of rejection would not be necessitated by applicant's amendment of claim 9.

Claim 6

Claim 6 has been amended to improve the form of the claim and to require a respective support member to be spirally wrapped around the first end of the member, another respective support member to be spirally wrapped around the second end of the member, and yet another respective support member to be spirally wrapped around the middle of the member.

*Docket: 440844*

The arguments set forth above relating to "spirally" in claim 1 are incorporated herein by reference, and the applicant submits that these arguments place claim 6 in condition for allowance.

Further, claim 6 requires a specific member that has a first end, a second end, and a middle, and that forms a loop only in its middle section (i.e., not at the first or second end). Neither Brown ('211) nor Ross-Kuehn ('054) sets forth such a member, as the members of Brown ('211) and Ross-Kuehn ('054) are simply circular rings that do not form a loop only in a middle section. As Ross-Kuehn ('054) does not disclose a member having such a first end, second end, and loop-defining middle, it cannot teach attaching a support member around such a member, and it clearly cannot teach attaching a support member spirally around such a member as set forth in claim 6.

In addition, claim 6 requires a respective support member to be spirally wrapped around the first end of the member, another respective support member to be spirally wrapped around the second end of the member, and yet another respective support member to be spirally wrapped around the middle of the member as set forth above. There is nothing in Brown ('211), Ross-Kuehn ('054), nor any of the other cited art, either alone or in combination, that teaches such a configuration.

For all of these reasons, the applicant respectfully submits that the examiner has not met the third requirement of *Vaeck*, and the applicant respectfully requests allowance of claim 6.

#### Claim 13

The arguments set forth above relating to "spirally" in claim 8 are incorporated herein by reference, and the applicant submits that these arguments place claim 13 in condition for allowance.

Further, claim 13 requires a strand retention member to be spirally wrapped around the first end of the elongated member, the middle of the elongated member, and the second end of the elongated member. The elongated member must form a loop and be elongated according to claim 13. Ross-Kuehn ('054) does not set forth such a member, as the member of Ross-Kuehn ('054) is simply a circular ring; it is in no way

*Docket: 440844*

"elongated". Ross-Kuehn ('054) also does not disclose wrapping anything spirally. Because Ross-Kuehn ('054) does not disclose an elongated member having such a first end, second end, and middle, it cannot teach wrapping a strand retention member around an elongated member that has a first end, second end, and middle. And as noted above, Ross-Kuehn ('054) does not disclose wrapping anything spirally, much less wrapping the claimed structure spirally. The applicant respectfully submits that the examiner has not met the third requirement of *Vaeck*, and the applicant respectfully requests allowance of claim 13.

In accordance with MPEP § 706.07(a), any subsequent rejection of claim 13 on a new ground of rejection (i.e., a ground of rejection not previously used to reject claim 13) should be in the form of a **non-final** Office Action unless necessitated by the information submitted in the IDS filed concurrently herewith. This is because claim 13 has not been amended herein, and therefore a new ground of rejection would not be necessitated by applicant's amendment of claim 13.

#### **New Claims**

Claims 15-25 are newly added.

#### **Claims 15, 18, and 19**

Claims 15, 18, and 19 use different language but all require that 1) a portion of a support member (also called a "base") is coupled to the member so that it cannot move relative to the member; and 2) another portion of the support member is movable relative to the member. This is disclosed in paragraphs 14 and 15 in the specification as filed, among other places. The applicant respectfully submits that these limitations distinguish claims 15, 18, and 19 even further from the prior art and that the prior art does not anticipate or render obvious claims 15, 18, and 19.

#### **Claim 16**

Claim 16 sets forth the structure of the elongate member differently from the previously-examined claims, and hopefully in a more clear manner. Claim 16 also incorporates a "spirally wrapped" limitation similar to those discussed in relation to

*Docket: 440844*

claims 1 and 8 above. As such, the arguments relating to "spirally" set forth in relation to claims 1 and 8 above are incorporated herein by reference, and the applicant respectfully submits that claim 16 is allowable for similar reasons.

Claim 17

Claim 17 requires the base to be fixedly coupled to the elongate member so that the base is not slidable relative to the elongate member. This is disclosed in paragraphs 14 and 15 in the specification as filed, among other places. The applicant respectfully submits that these limitations distinguish claim 17 even further from the prior art and that the prior art does not anticipate or render obvious claim 17.

Claim 20

Claim 20 sets forth additional aspects of an embodiment, namely the hair anchor being operatively coupled to the base adjacent the elongate member. The element 24 that the examiner previously referred to as an anchor in Brown ('211) is not adjacent an elongate member, the element that the examiner previously referred to as a hair anchor in Silva ('909) is not adjacent an elongate member, and neither Brown ('211) nor Silva ('909) discloses a hair anchor operatively coupled to a base. Claim 20 sets forth a non-obvious combination of elements that is not entirely taught or suggested by the prior art, and to the extent that the prior art teaches or suggests individual portions of claim 20, there is no motivation to combine that prior art.

Claim 21

Claim 21 sets forth additional aspects of an embodiment, namely the hair anchor being operatively coupled to the elongate member middle section. The element 24 that the examiner previously referred to as an anchor in Brown ('211) is not operatively coupled to an elongate member, and the element that the examiner previously referred to as a hair anchor in Silva ('909) is not operatively coupled to an elongate member; as such, neither are coupled to an elongate member middle section. Claim 21 sets forth a non-obvious combination of elements that is not entirely taught or suggested by the prior art,

*Docket: 440844*

and to the extent that the prior art teaches or suggests individual portions of claim 21, there is no motivation to combine that prior art.

Claim 22

Claim 22 sets forth the structure of the elongate member differently from the previously-examined claims, and hopefully in a more clear manner. Claim 22 also incorporates "spirally wrapped" limitations similar to those discussed in relation to claims 1 and 8 above, though claim 22 clearly incorporates three flexible bases. As such, the arguments relating to "spirally" set forth in relation to claims 1 and 8 above are incorporated herein by reference, and the applicant respectfully submits that claim 22 is allowable for similar reasons. Further, the prior art fails to disclose three flexible bases spirally wrapped around such an elongate member in the claimed manner, and the applicant also submits that this is grounds for allowance.

Claims 23 and 24

Claims 23 and 24 set forth details of the coupling of specific bases to the elongate member that are not disclosed in or rendered obvious by the prior art.

Claim 25

Claim 25 sets forth details of the hair anchor that are not disclosed in or rendered obvious by the prior art; namely, 1) the attachment of the hair anchor to a specific base or a specific portion of a specific elongate member; and 2) the concealing interaction between specific hair strands and the hair anchor.

Claims 15-25

The applicant respectfully submits that claims 15-25 are in condition for allowance for the reasons noted above, and allowance of claims 15-25 is respectfully requested.



SEP 11 2006

Docket: 440844


**II. Conclusion**

In view of the above Amendments and Remarks, the applicant has addressed all issues raised in the Office Action dated 5/9/2006, and the applicant respectfully solicits a Notice of Allowance. Should any issues remain, the examiner is encouraged to telephone the undersigned attorney. In accordance with MPEP § 706.07(a), a subsequent rejection of claim 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, or 14 on a new ground of rejection (i.e., a ground of rejection not previously used to reject the respective claim) should be in the form of a non-final Office Action unless necessitated by the information submitted in the IDS filed concurrently herewith.

The fee of \$285 for one additional independent claim in excess of three, five claims overall in excess of twenty, and a one-month extension of time for a small entity is enclosed herewith. The applicant believes no other fees are currently due; however, if any fee is deemed necessary in connection with this Amendment and Response, please charge Deposit Account No. 12-0600.

Respectfully submitted,

LATHROP &amp; GAGE LLC

  
A. Justin Poplin, Reg. No. 53,476  
10851 Mastin Boulevard  
Building 82, Suite 1000  
Overland Park, Kansas 66210-1669  
Tel No: 913-451-5130  
Fax No: 913-451-0875

CWDOCS 467641v1

14 of 14

U.S. Patent Application Serial No. 10/760,055  
Amendment in Response to 5/9/2006 Office Action